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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**
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15 SECURITIES AND EXCHANGE COMMISSION,
16 Plaintiff,
17 vs.
18 CARRIE L. TOLSTEDT,
19 Defendant.

Case No. 20-cv-07987-JST

[PROPOSED] FINAL JUDGMENT

1 The Plaintiff, Securities and Exchange Commission (“Commission” or “SEC”), having
 2 filed a Complaint; and Defendant Carrie L. Tolstedt having entered a general appearance,
 3 consented to the Court’s jurisdiction over Defendant and the subject matter of this action,
 4 consented to entry of this Final Judgment without admitting or denying the allegations of the
 5 Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph IX.),
 6 waived findings of fact and conclusions of law, and waived any right to appeal from this Final
 7 Judgment:

8 I.

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
 10 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the
 11 Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5
 12 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of
 13 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
 14 connection with the purchase or sale of any security:

- 15 (a) to employ any device, scheme, or artifice to defraud;
- 16 (b) to make any untrue statement of a material fact or to omit to state a material fact
 17 necessary in order to make the statements made, in the light of the circumstances
 18 under which they were made, not misleading; or
- 19 (c) to engage in any act, practice, or course of business which operates or would
 20 operate as a fraud or deceit upon any person.

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
 22 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who
 23 receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s
 24 officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or
 25 participation with Defendant or with anyone described in (a).

26 II.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
 28 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933

(the “Securities Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from aiding and abetting any violation of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §§ 78m(a) & 78m(b)(2)(A), or Rules 13a-1, 13a-13, and 12b-20 thereunder, 17 C.F.R. §§ 240.13a-1, 240.13a-13, and 240.12b-20, by knowingly or recklessly providing substantial assistance to an issuer, which is required to file quarterly and annual reports in accordance with applicable rules and regulations and which are not misleading, and which is required to make and keep books, records, and accounts in reasonable detail to accurately reflect the transactions and dispositions of the assets of the issuer, in that issuer’s failure to do so.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers,

agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2) and Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$1,459,076, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$447,874, for a total of \$1,906,950. Defendant shall satisfy this obligation by paying \$1,906,950 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any amounts due after 30 days following entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$3 million to the Securities and Exchange Commission pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d). Defendant shall make this payment within 30 days after entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in

1 this action. Defendant shall pay post-judgment interest on any amounts due after 30 days of the
2 entry of this Final Judgment pursuant to 28 USC § 1961.

3 VII.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall make
5 the payments ordered in paragraphs V. and VI., above, by any of the following means: Defendant
6 may transmit payment electronically to the Commission, which will provide detailed ACH
7 transfer/Fedwire instructions upon request. Payment may also be made directly from a bank
8 account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.
9 Defendant may also pay by certified check, bank cashier's check, or United States postal money
10 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

11 Enterprise Services Center
12 Accounts Receivable Branch
13 6500 South MacArthur Boulevard
Oklahoma City, OK 73169

14 and shall be accompanied by a letter identifying the case title, civil action number, and name of
15 this Court; Carrie L. Tolstedt as the defendant in this action; and specifying that payment is made
16 pursuant to this Final Judgment.

17 Defendant shall simultaneously transmit photocopies of evidence of payment and case
18 identifying information to the Commission's counsel in this action. By making these payments,
19 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of
20 the funds shall be returned to Defendant.

21 The Commission shall hold the funds (collectively, the "Fund") until further order of this
22 Court. The SEC may propose a plan to distribute the Fund subject to the Court's approval, and the
23 Court shall retain jurisdiction over the administration of any distribution of the Fund.

24 The Commission may propose a plan to distribute the Fund subject to the Court's approval.
25 Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of
26 Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the
27 administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an
28 Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IT IS SO ORDERED.

DATE:

JONATHAN S. TIGAR
UNITED STATES DISTRICT JUDGE